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FILED
AUG 29 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 306 "A"

G. D. BATEN,
Petitioner and Appellant below,
v.
NONA-FLETCHER MINERAL COMPANY,
Respondent and Appellee below.

Petition "A" for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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G. D. BATEN,
Petitioner in Pro Per

ALPHA LAW BRIEF CO., HOUSTON

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner respectfully presents this application for a Writ of Certiorari in the above cause as follows:

I.

Statement of the Case

1. On behalf of himself as a stockholder of the Respondent Corporation, as well as for other stockholders in similar situation, Petitioner filed suit in the United States District

Court for the Eastern District of Texas praying for certain equitable relief, including injunction and receivership, and for the annulment of two *ultra vires* acts of the Respondent's board of directors (R. 19).

Two other persons, Bowers and Gordon, claiming certain rights under contract with Respondent and as creditors of the Corporation, joined in this Petitioner's action, seeking the same injunction and custodial relief.

The bill of complaint was therefore a combined stockholders' and creditors' bill, seeking common relief as to injunction and receivership. It is presented here, on material allegations upon the face of which the court dismissed the suit for want of jurisdiction, on the sole ground that other persons of the same State with plaintiffs are "indispensable" parties.

2. The Bill of Complaint, filed March 12, 1951, is in substance as follows:

Introduction of the parties plaintiff G. D. Baten, W. O. Bowers, Jr., and W. D. Gordon, citizens of the State of Texas, and the defendant Nona-Fletcher Mineral Company, a corporate citizen of the State of Delaware, and statement that the matter in controversy exceeds in value the sum of Three Thousand Dollars, and that plaintiff Baten sues as a stockholder of defendant corporation and on behalf of other stockholders similarly situated, and that the other plaintiffs Bowers and Gordon as attorneys employed by said corporation sue for the fixing and establishing of their compensation and as creditors join with the plaintiff stockholder in the equitable remedies sought against certain *ultra vires* acts committed by the directing agencies of the corporation. (R. 1-2)

Then follows the allegations of the bill, viz:

First. (1) For the urgent equitable relief herein sought, and (2) for judgment declaring and fixing the rights and status of the attorneys growing out of an incident to their employment and contractual obligations with the respondent corporation. (R. 3)

Second. This section alleges the corporation acquisition of 4,176 acres of land and its perfect record title thereto, stating the details of its ownership and possession covering antecedent chains of consecutive tenures, uninterrupted by an adverse claim for forty-three years. (R. 3-9)

Third. This recites the employment of attorneys Bowers and Gordon to clear the land of newly asserted adverse claims by parties seeking to interfere with the corporation's use and possession of its property and with its oil lessees and their acts thereunder. (R. 9 to 11)

Fourth. This details the facts stated briefly on page 3 of the opinion of the Court of Appeals as to the attempt of the president of the corporation to settle the adverse claim by conveying one-fourth (¼) of the corporation's acreage for a quitclaim. It was on objection of the company's attorneys that such claim was "patently void and unenforceable" "not consummated at that time". (R. 11 to 12) The bill further alleges that on February 22, 1951, without advice of its attorneys Bowers and Gordon (Opinion 3) the officers of the corporation made the settlement by conveying to these claimants 225 acres. (R. 11 to 14) The deed, ordered by the board under legal advice and direction of Mr. Parker as such claimants' attorney, was immediately signed by the corporation's executive officers, and in a meeting lasting about ten minutes, and at the same time previous orders prepared by Mr. Parker ordering all the remaining oil property of the company to be conveyed to its 46 stockholders and a deed to this effect was immediately signed by such executive officers and the instruments registered and

recorded the next day. (R. 11 to 14) See Exhibit "A", deed to Anderson claimants reciting at the end, "This instrument shall have the effective date of November 9, 1948". (R. 29) The accompanying resolution provided that the case then pending in the Appellate Court at New Orleans should be dismissed.

Fifth. The bill avers that the foregoing proceedings were *ultra vires* under the corporate charter and the decisions of the State and Federal Courts, and the statutes of Texas. (R. 14-16)

Sixth. This clause alleges the act of the corporation directors in conveying away at the same time all the remaining property and assets of the corporation to all its stockholders as a form of liquidating dividend was a fraud upon its creditors, including its attorneys, and was void as *ultra vires*, condemned by the statute and decisions of the courts, state and federal. (R. 16 to 17)

Seventh. This section deals with the services of the attorneys, the great value of the subject matter involved, the nature of their employment and seeks, upon consideration of the facts and circumstances, a determination of the value of their services and "upon such determination, that the matter of fees due petitioners be enforced as in law and equity they are entitled to." It concludes the bill as follows: "The transfer of all its assets by the board of directors is utterly void, not only as to its creditors, such as your petitioners and the United States Government are, but as to its stockholders, who are the real owners and beneficiaries of the property involved, and Your Honor should so hold:

"(1) That the transaction by which this company's property has been given away to an adversary without just cause or claim be annuled as void and *ultra vires*, and

"(2) That the disposal of all its corporate assets upon which it can pay its debts and upon which the corporation can continue to exist be declared utterly null and void." (R. 19)

Eighth. The bill concludes with the following prayer:

"(1) That an injunction be issued, after due hearing on this case, forever annuling the transactions whereby its property has been purloined and transferred without consideration valid in law, and for such other injunctive relief as the merits of this case may seem appropriate and just.

"(2) That Respondent and its agents and attorneys be enjoined from interfering with Petitioners in discharging their duties in presenting appellants' case in the United States Court of Appeals, and from otherwise interfering with them in carrying out their contractual employment and professional obligations.

"(3) That a Receiver, in all events, be appointed by Your Honor to take possession of this company's property and estate and administer it pending a final determination of this case and of its controversy with other parties, and that such other relief be awarded for the purpose of preserving through the custody and arm of this Court this valuable estate so groundlessly dissipated, and the corporation's life and existence imperiled if not destroyed through the mismanagement of the so-called Trustees or Board of Directors.

"(4) That such other and further relief be awarded your Petitioners as in law and equity they may be entitled to receive whether herein specially prayed for or not.

(Note: This original bill was filed March 12, 1951. On March 19, 1951 the plaintiff having learned that on an ex-

parte application made by respondent to the United States Court of Appeals, that tribunal had dismissed the pending appeal, these petitioners filed its First Amendment to this bill). (R. 21-22)

3. The Respondent on March 29, 1951, filed a motion to dismiss the case on the ground that it was a suit "to annul two written deeds" (R. 23-24).

4. The trial court granted this motion and dismissed the case August 9, 1951. (R. 66)

5. The case was appealed, and on July 18, 1952, the order of dismissal for want of jurisdiction was affirmed. (Opinion 1 to 5)

II.

Reason for Allowance of the Writ

The cause of action brought by Petitioner to annul two *ultra vires* acts of the Corporation under and by virtue of which its executive officers confiscated its visible assets and destroyed the corporate business (R. 19) *was not a suit to cancel deeds* to land, in which petitioner was in no way a party, and the lower courts erred in so holding, and in denying the right of this stockholder to the jurisdiction of the Federal Court to grant the relief prayed for. (R. 20)

III.

Remarks and Prayer for the Writ

Without enlarging this petition by rehearsing the authorities cited and quoted from in *the joint "Appellants' Brief"* as well as in *this Petitioner's Brief for Appellant Stockholder* filed in the Court of Appeals, both herewith presented, your applicant respectfully refers to same as conclusive of any such contentions. To the contrary of this unbroken current

of authority, there has not been presented, and we affirm there cannot be presented, a single case in American jurisprudence. Such action is therefore unprecedented and arbitrary; a denial of due process of laws.

Not only did this stockholder not present such a suit to the court, but is denied by universal rules of law and procedure the right or power to do so. A stockholder of a corporation cannot sue to cancel a corporation's deed to the corporate land. He can, and in this case did, seek to cancel and annul *ultra vires* acts of corporate directors, and invoke the power and authority of courts of equity, through injunction and receivership, to pursue in a proper proceeding and recover corporate assets of great value, passed to other persons by void and fraudulent corporate acts. That is what this Petitioner did here, and the denial of the jurisdiction of the court, in this case, is unprecedented and arbitrary. This language is justified by the Record here and by the cases cited and quoted from in the two above referred to briefs, filed in the lower courts and accompanying this petition, and by reference made a part hereof.

It is therefore respectfully requested that Your Honors grant Petitioner a Writ of Certiorari directing said Court of Appeals to certify to this Court the proceedings, now lodged with its clerk, for inspection and review and for decision of this Court, conformably with its rules of practice and procedure; and Petitioner further prays that this Honorable Court grant to him general relief of such nature and kind as the cause may require whether herein specially prayed for or not.

I hereby certify that I have personally served W. E. Orgain, attorney for Respondent, with a copy of this Petition, before presenting it to this Court.

G. D. BATEN,
Petitioner in Pro Per